No. 85-880

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

DIRECTORY SERVICE COMPANY OF COLORADO, INC., and FRANCES A. ANDERSON,

Petitioners,

v.

ROCKFORD MAP PUBLISHERS, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do the copyright laws of the United States, 17 U.S.C. §§ 101, 102, and 103(a), accord copyright protection to an author for a compilation of facts where the author has not subjectively selected, coordinated, and arranged those facts?

2. Should the amount of originality required for compilation copyright protection differ between the Seventh Circuit and other circuits so that a compilation of "land ownership data" on a plat map which would clearly be in the public domain in the other circuits is clearly protected by copyright in the Seventh Circuit?

3. When an alleged infringer of a copyrighted compilation independently derives its own facts by consulting various sources and uses a copy of the compilation as a worksheet for transmitting these independently derived facts, is it an infringer, even though it (1) consulted original sources in deriving its facts; (2) consulted more sources than did the copyright owner; (3) arranged its facts in the conventional and mandatory format for such compilations; and (4) expended more time and effort than the copyright owner?

RULE 21.1(b) AND 28.1 STATEMENTS

All parties to the proceedings are listed in the caption of the case in this Court.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

Petitioners ("DSC" and "ANDERSON") pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit (hereinafter the "Seventh Circuit").

OPINIONS BELOW

The opinion of the United States District Court for the Central District of Illinois is reported at 224 U.S.P.Q. 851 and reproduced on Appendix pages A-11 to A-20. That Court held the land ownership data in the Ford County, Illinois, Plat Book published by respondent ("RMP") to be copyrighted and infringed by a Ford County, Illinois, Directory and Plat Book published by DSC.

The opinion of the Seventh Circuit is reported at 768 F.2d 145 and 226 U.S.P.Q. 1025, and is reproduced on appendix page A-1 to A-9. That Court affirmed the District Court's judgment.

JURISDICTION

The Judgment of the Seventh Circuit was entered on July 15, 1985. A timely petition for rehearing was denied by an Order dated August 23, 1985, a copy of which is reproduced on Appendix page A-10.

The United States District Court had original jurisdiction of this matter pursuant to 28 U.S.C. § 1338(a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and § 2101(c).

STATUTES INVOLVED

In the interest of brevity, only the pertinent portions of the relevant statutes are set forth below:

17 U.S.C. § 101

> "A 'compilation' is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship."

17 U.S.C. § 102(b)

> "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."

17 U.S.C. § 103(b)

> "The copyright in a compilation or derivative work extends only to the material contributed by the author of

such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material."

STATEMENT OF THE CASE

The Facts

A plat map is a conventional way of showing the location, shape, size, and ownership of parcels of land. Rockford Map Publishers, Inc. ("RMP") has published plat maps for Ford County, Illinois, since 1948.

The townships of rural counties in Illinois are divided into congressional sections. The term "plat map" means that it is a map which consists of the outline of each plot of land in each section, the acreage of that plot, and the name of the owner of that plot. This information is conventionally known as "land ownership data."

RMP collected and arranged land ownership data for the thirteen rural townships in Ford County, Illinois, on base maps. It had prepared the base maps from aerial photographs. The land ownership data was obtained from a single source; the County Assessor's Tax Roll Books in Ford County, Illinois. Each plot, in each numbered section, is described there in writing both as to size, shape, and position in the section. The owner's name and the acreage of the plot is listed with this description. Rockford's agent took this information and placed it on all 13 township maps in the copyrighted publication in 14 hours.

DSC also published plat maps for Ford County. It used a simple grid form which it purchased and used for a base map. DSC's agent, Anderson, went to the Ford County Tax Assessor's Office to collect land ownership data. She spent 75 hours

compiling this data. She obtained it not only from the Assessor's Tax Roll Books but also from aerial maps which depicted plot shape, size and position in each section.

Anderson took blown-up copies of RMP's plat maps to the Assessor's Office with her to use as worksheets. She looked up ownership data in the Assessor's Office and, if the RMP plat maps displayed it accurately, she merely made a check in that plot on the worksheet. If the RMP land ownership data did not agree with her research results, she made necessary changes on the worksheets. The worksheets were then sent to DSC. DSC inscribed land ownership data on its grids by referring visually to the worksheets. Directory's plat maps were prepared from these grids. They look nothing like Rockford's (see Appendix pages A-8 and A-9). RMP admits DSC's maps do not show true land sections.

The Proceedings Below in the District Court

The District Court, in its Order of June 14, 1984, rendered judgment in favor of RMP on the copyright infringement claim. The District Court concluded that RMP had a valid copyright in its compilation of "landowner information." It further concluded that DSC had infringed the copyright by copying this landowner information from RMP's publication.

"It is apparent that the compilation of landowner information in the RMP publication is subject to copyright," the District Court stated, relying upon *Schroeder v. William Morrow & Co.*, 566 F.2d 3, 5 (7th Cir. 1977). The *Schroeder* decision is quoted to the effect that "an original compilation of names and addresses is copyrightable even though the individual names and addresses are in the public domain and not copyrightable."

The District Court in the instant case went on to conclude that "(t)he RMP compilation is not merely an assemblage of names and addresses but is a portrayal of property boundaries showing ownership and the size of the tract owned." In other

words, reasoned the District Court, RMP had done even more than make an original compilation of names and addresses; it had portrayed property boundaries, showed property ownership, and showed property tract size.

Relying upon *Schroeder,* supra, for the proposition that "it is the product of the compiler's industry that is protected and all that need be shown is 'industrious collection' on the part of the compiler," the District Court found that RMP had, in fact, met the test of industrious collection. In fact, the District Court found that "the testimony is unrefuted that RMP engaged in industrious collection. . . ."

The District Court did acknowledge that RMP had "spent only 14 hours in revising and updating the 1983 edition of its plat book," i.e., only 14 man hours of labor which could be allocated to collection of landowner information. According to the District Court, however, that finding "overlook(ed) the fact that the 1983 book was based on the 1956 book." The District Court made no finding with regard to what "industrious collection" efforts were expended by RMP with respect to landowner information or land ownership data for the 1956 Ford County Plat Book. However, RMP admitted that even doing the job "from scratch" would require only about 42 hours.

On the infringement issue, the District Court relied upon *Toksvig v. Bruce Publishing Co.,* 181 F.2d 664 (7th Cir. 1950). More specifically, it relied upon the following statement from *Toksvig,* at page 667, to wit: "The question is not whether (the Defendant) could have obtained the same information by going to the same sources but rather did she go to the same sources and do her own independent research? In other words, the test is whether the one charged with the infringement has made an independent production, or made a substantial and unfair use of the complainant's work."

The District Court found that DSC "did not make an independent production" in the present case. It found that

DSC "merely took the copyrighted RMP information and edited it and then published it as its own." The Court found "it was an economic shortcut for DSC to xerox (sic) the RMP maps containing the landowner information, update them, and then copy the RMP information onto DSC's grid charts."

The Law in the Seventh Circuit And the Proceedings There

In its 1977 decision in *Schroeder,* supra, the Seventh Circuit held that a valid compilation copyright could be obtained on a list of names and addresses where the compilation efforts of the author amounted to "industrious collection." In other words, the "material contributed by the author" could be the "industrious collection" of data, for example. In the *Schroeder* case, Schroeder had collected and categorized the names and addresses of suppliers of garden seeds, plants, garden publications and other items of interest to gardeners from a number of sources. She not only obtained information from more than one source but she used her own judgment in categorizing the names. The amount of "industry" she put into her collection, as detailed in the District Court opinion reported at 421 F.Supp. 372 (N.D. Ill., E.D. 1976) was immense. The Seventh Circuit said Schroeder's work amounted to "industrious collection."

Since 1977, and prior to the Seventh Circuit's decision in the present case, the District Courts in the Seventh Circuit have uniformly followed the "industrious collection" rule. The amount of time and effort expended in collecting and rearranging facts measured compilation copyrightability. *See Rand McNally & Co. v. Fleet Management Systems, Inc.,* 600 F.Supp. 933 (N.D. Ill., E.D. 1984); and *National Business Lists v. Dunn & Bradstreet, Inc.,* 552 F. Supp. 89,94 (N.D. Ill., E.D. 1982), in this regard.

The Seventh Circuit's decision in the present case then ignored the "industrious collection" standard. "The input of

time is irrelevant," it held. The fact that RMP used only a single source was irrelevant. The Seventh Circuit held that the key to compilation copyright here was the change in form which took place in the facts involved, concluding that RMP had turned the metes and bounds of legal descriptions in the Tax Assessor's Books into pictorial representations, i.e., plot outlines.

On the infringement issue, the Seventh Circuit held that DSC had copied RMP's "output." It said DSC had used RMP's work "as a template." According to the Court, DSC had borrowed RMP's translation of "legal jargon to a picture."

The Law in Other Circuits and in England

In *Eckes v. Card Prices Update,* 736 F.2d 859,862,863 (2nd Cir. 1984), the Second Circuit held that the "Sport Americana Baseball Card Price Guides" merited copyright protection. It listed some 18,000 different baseball cards, along with the going price of each card according to condition. In addition, the guide classified the cards into two groups: premium and common. Chief Judge Feinberg, in his opinion said:

> "Copyright law and compilations are uneasy bedfellows since 'the vocabulary of copyright law is ill suited to analyzing rights in works of non-fiction'," . . . "Indeed, while this court has recognized that the 'distinction between fact and expression is not always easy to draw,'... we have been particularly restrictive in the protection of non-fiction works indicating, for example, that the fruits of another's labor in lieu of independent research obtained through the sweat of a researcher's brow, does not merit copyright protection absent, perhaps, wholesale appropriation."
>
> * * * *
>
> "Nevertheless, our cases do not hold that subjective selection and arrangement of information does not merit protection. . . ."

The Court found that the first compiler had exercised subjectivity in selection, creativity, and judgment in choosing among 18,000 or so baseball cards. On that basis the Second Circuit concluded the guide was copyrightable.

The Second Circuit, in *Financial Information, Inc. v. Moody's Investors Service, Inc.*, 751 F.2d 501 (2d Cir. 1984), dealt with the same issue and reached the same results. A discussion of the "competing reasonable lines of authority" is found at pages 505, 506.

In *Rosemont Enterprises, Inc. v. Random House, Inc.*, 366 F.2d 303,310 (2d Cir. 1966) the Second Circuit disagreed with *Toksvig v. Bruce Publishing Co.*, supra, on the issue of fair use. The Second Circuit there said:

> "We, however, cannot subscribe to the view that an author is absolutely precluded from saving time and effort by referring to and relying upon prior published material.... It is just such wasted effort that the proscription against the copyright of ideas and facts, and to a lesser extent the privilege of fair use, are designed to protect...."

The Second Circuit fair use interpretation appears to have been adopted from case law in England. There, at the turn of the century, in *Moffatt & Paige Ltd. v. Gill & Sons Ltd.*, 86 L.T.R. (n.s.) 465,471 (C.A. 1902), the court said in dictum, quoting a statement by counsel with approval:

> "though you cannot, where another man has compiled a directory, simply take his sheets and reprint them as your own, you are entitled, taking the sheets with you, to go and see whether the existing facts concur with the description in the sheets, and if you do that you may publish the result as your own."

One year after *Moffatt*, supra, the Second Circuit adopted a rule analogous to this one in *Edward Thompson Co. v. American Law Book Co.*, 122 Fed. 922 (2d Cir. 1903).

In *Miller v. Universal City Studios, Inc.*, 650 F.2d 1365, 1369 (5th Cir. 1981) the Court specifically rejected the in-

dustrious collection doctrine of *Schroeder v. William Morrow & Co.*, supra. In doing so, it said:

> "A copyright in a directory, however, is properly viewed as resting on the originality of the selection and arrangement of the factual material, rather than on the industriousness of the efforts to develop the information."

In *Southern Bell Telephone & Telegraph Co. v. Associated Telephone Directory Publishers,* 756 F.2d 801, 809 (11th Cir. 1985), the Eleventh Circuit followed *Miller* on the issue of originality. In this case it held that a telephone directory was copyrightable. In doing so, it said:

> "A telephone directory or any other compilation satisfies the 'original work of authorship' requirement of section 102 where the directory is the product of subjective 'selection, organization, and arrangement of the pre-existing materials' ... (cite omitted) ... *See Miller v. Universal City Studios, Inc.*, 650 F.2d 1365,1369 (5th Cir. 1981). The former Fifth Circuit in *Miller* discounted the substantial line of cases beginning with *Jeweler's Circular Publishing Co. v. Keystone Publishing Co.*, 281 F. 83 (2d Cir. 1922). *Jeweler's Circular* held that originality exists where the compilation 'results from the *industrious collection,* judgment, and labor required to select, organize, and arrange it.' ... (cite omitted) ... In so holding, it agreed with *1 Nimmer,* § 3.04 that 'industriousness of the efforts to develop the information' is not relevant to a determination of originality under the copyright statute. *Miller,* 650 F.2d at 1369; *1 Nimmer,* § 3.04 at 3-19 (footnote omitted)."

REASONS FOR GRANTING THE WRIT

The decision of the Seventh Circuit is in conflict with decisions of other circuit courts on the two most important issues related to compilation copyright law:

1. what is the measure of original authorship necessary for compilation copyright protection; and
2. what use may the second compiler make of the first compiler's work?

If the decision is not reversed by this Court, it will sanctify forum shopping among the circuits by first and second compilers, so to speak. What is copyrightable in the Seventh Circuit may well not be copyrightable outside of its boundaries. What is fair use outside its boundaries will definitely not be fair use within them.

The combinative effect of both a low originality standard for copyrightability and a high non-use standard for fair use makes the Seventh Circuit climate poor for the dissemination of facts in the public domain. As such, it is an island in the Midwest where the purpose and intent of the copyright laws are not followed.

These directory or compilation copyright issues are not obscure, intellectual arguments. Directories of every kind imaginable are proliferating at a dizzying pace; a fact of which, Petitioner believes, the Court will readily take judicial notice. As such, these issues are important enough to merit the Court's attention.

I. The Circuits Are in Dispute as to What Constitutes Originality for Purposes of Obtaining a Compilation Copyright.

It is well-settled that directories may be copyrightable. There is disagreement as to the scope of that protection. Most jurisdictions follow the rule that directories which comprise public domain information are protectible to the extent that they exhibit subjective selection, organization, and arrangement of the preexisting materials. See, e.g., *Eckes v. Card Prices Update,* supra, *Financial Information, Inc. v. Moody's Investors Service, Inc.*, supra, *Miller v. Universal Studios, Inc.*, supra, and *Southern Bell Telephone & Telegraph Co. v. Associated Telephone Directory Publishers,* supra.

The Seventh Circuit goes further than this, however. It protects the industry and effort expended in formulating compilations, regardless of whether there has been subjective

selection, organization, and arrangement of the materials. This rule is commonly referred to as the "sweat of the brow" theory of protection. *See* Gorman, *Copyright Protection For The Collection And Representation Of Facts,* 76 Harv. L. Rev. 1569, 1584 (1963).

The Seventh Circuit rule was laid out in *Schroeder v. William Morrow and Co.,* supra. There the court found that a gardening directory was infringed and observed:

> "An original compilation of names and addresses is copyrightable even though the individual names and addresses are in the public domain and not copyrightable. . . . The copyright protects not the individual names and addresses but the compilation, the product of the compiler's industry."

In the present case, the Seventh Circuit has ignored its "sweat of the brow" theory, although the opinion is not clear whether protection depends from this theory or relies primarily on a depiction of plot shape. In either case, however, RMP was not accorded copyright protection by the same standard used in the other circuits. They require subjective selectivity in the choice and arrangement of information. In the present case, RMP admittedly exhibited no subjective selectivity in the choice of information and no subjectivity in the depiction of that information. The choice of information and the shape of the plots was dictated entirely by the requirements of the plat map. RMP had to display the information exactly as it did, it had no choice. As such, even if it may be said that the "idea" of plot shape and position is merged with the "expression" of that idea, the idea cannot be expressed in any other way on a plat map. As such, the expression is insufficiently original to make it copyrightable. *Apple Computer, Inc. v. Franklin Computer Corp.,* 714 F.2d 1240, 1252, 1253 (3rd Cir. 1983).

II. The Circuits Are in Dispute as to What Use a Second Compiler Can Make of a First Compiler's Work

In the present case, DSC had used RMP's maps as worksheets. It was not disputed that DSC had done all its own research, independently of the RMP work. It was not disputed that DSC had actually spent more time and consulted more sources than RMP. It was not disputed that DSC did not merely reproduce the plot outlines, acreages and owner's names from the RMP plat maps; a simple examination of maps from the two publications (pages A-8 and A-9 of the Appendix) makes that evident.

However, RMP had sinned in the Seventh Circuit. As the court said in its opinion:

> "The second compiler must assemble the material as if there had never been a first compilation; only then may the second compiler use the first as a check on error.... Here, as in *Schroeder,* the second compiler started with the selection, ordering, and arrangement of the first error.... That Directory Service made some changes is irrelevant; the starting point itself offended. (citation and footnote omitted)."

In contrast, the Second Circuit does not so limit the second compiler. *Rosemont Enterprises, Inc. v. Random House, Inc.*, supra. The Second Circuit follows the English rule set out in *Moffatt & Paige Ltd. v. Gill & Sons Ltd.*, supra, as evidenced by the decision in *Edward Thompson Co. v. American Law Book Co.*, supra.

CONCLUSION

The Seventh Circuit's "industrious collection" rule is in conflict with the subjective selection and arrangement rule of other circuits. To the extent the Seventh Circuit followed its own rule in this case, petitioners submit it erred. As the noted copyright expert, Melville Nimmer said:

> "The desire of the courts in the line of cases above described to protect the industriousness of the researcher is both understandable and in a sense commendable. It is submitted, however, that these cases are incorrect in that they fail to apply the standard of originality as it is understood in the law of copyright." [1 M. Nimmer, *Nimmer On Copyright* § 3.04 at 3-19 (1985)]

If the Seventh Circuit did not entirely follow its own rule in this case, it rested copyrightability to a greater or lesser extent on RMP's conversion of the written description of plot shape into an outline of that shape. To the extent that such is the case, the Seventh Circuit also erred. The conversion required neither industriousness nor subjectivity of any kind. It was merely a conversion of information already in the public domain and, what is more, already collected in one place, the Tax Assessor's office, into the form that a plat map format required. What RMP did was take the public's (Tax Assessor) information and sell it as RMP's information.

The Seventh Circuit's fair use rule is also in conflict with the fair use rule in the Second Circuit, for example. The Seventh Circuit is much more restrictive as far as a second compiler's use of a first compiler's work is concerned. Petitioner submits that in an area where all the facts are in the public domain and, in fact, as here, the public may even have paid to

have them assembled (in a Tax Assessor's office), the Seventh Circuit rule is the erroneous one.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT were served on respondent's attorneys by first-class mail, postage prepaid, addressed to:

MICHAEL C. PAYDEN
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GILL M. GARMAN
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on this 20th day of November, 1985.

APPENDIX

In the

United States Court of Appeals

For the Seventh Circuit

No. 84-2301

ROCKFORD MAP PUBLISHERS, INC.,

Plaintiff-Appellee,

v.

DIRECTORY SERVICE COMPANY OF COLORADO, INC. and FRANCES A. ANDERSON,

Defendants-Appellants.

On Appeal from the United States District Court
for the Central District of Illinois, Danville Division.
No. 83-2523—Harold A. Baker, *Judge.*

ARGUED MAY 20, 1985—DECIDED JULY 15, 1985

Before BAUER and EASTERBROOK, *Circuit Judges*, and CAMPBELL, *Senior District Judge.**

EASTERBROOK, *Circuit Judge.* A plat map shows the location, size, and ownership of parcels of land. Rockford Map Publishers makes plat maps of rural counties. They are useful to local residents and to sellers of farm equipment, who can learn the identities and needs of potential customers. Doubtless they have other uses as well.

Rockford Map starts with aerial photographs distributed by the Department of Agriculture. It traces the topographical features from the photographs and draws lines showing townships and sections. Then an employee goes to places where land titles are recorded and reads the books. The employee uses the legal descriptions of the

* The Honorable William J. Campbell, Senior District Judge for the Northern District of Illinois, is sitting by designation.

deeds to draw boundary lines indicating the location and size of each parcel. He pencils in the name of the owner. From time to time Rockford Map updates the maps as ownership of land changes. Figure 1 is the result for one township in Ford County, Illinois.

Rockford Map has repeated this process for more than 500 counties throughout the United States. The first plat of Ford County was prepared in 1948, and a new one was prepared from scratch in 1956. Rockford Map published updated versions of the Ford County plat maps in 1961, 1964, 1966, 1969, 1972, 1974, 1976, 1977, 1979, 1981, and 1983. The copyrights of several revisions, including the one in 1983, were registered. The most recent update took about 14 hours' work in the Ford County Courthouse. An employee of Rockford Map estimated that it would have taken him between 40 and 45 hours to do the research for Ford County from scratch.

Directory Service Co. also publishes plat maps. It starts with a square grid and draws in the information about ownership without regard to topographical features. When Directory Service decided to do a plat map of Ford County, it hired a local resident and gave her instructions about how to interpret information in the title records. In order to make her task easier Directory Service enlarged Rockford Map's plat maps for Ford County. Directory Service told its agent to check the records using Rockford Map's map as a worksheet.[1] If a search of the records revealed that Rockford Map's map was correct, the agent

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[1] This is apparently a routine practice at Directory Service. An internal manual says that "[t]he first step in the plat process is to update all of the land ownership information in the county. The best way to accomplish this is to obtain a plat map from another source that we can use as a 'base' and then have someone in the county update that information using current public records. Plat books can usually be purchased from a variety of sources, including other private publishers or the county auditor's office. Once a plat book is obtained, D.S.C. will enlarge the township maps to our normal correction map size so that changes and information needed can be more easily written directly on the map."

put a green check in the space depicting the parcel of land; if the map was incorrect, the agent overwrote the map in red. The agent also recorded information about parcels Rockford Map had deemed too small to put on its plat maps. The agent estimates that she spent 75 hours on these tasks for Ford County. When she was done she sent the corrected plat maps to Directory Service, whose staff produced a new map. Figure 2 is Directory Service's map for the same township in Ford County.

Rockford Map could tell by looking at Directory Service's product that its plat maps had been used as templates. Some of the names in Rockford Map's maps have bogus middle initials. These initials, if read from the top of the map to the bottom, spell out "Rockford Map Inc." (Read down the column at 2400 E in the map, starting with Glenn R. Polson.) Rockford Map put these trap initials in the maps of four townships in Ford County. Directory Service's maps contained 54 of the 56 trap initials.

Both Rockford Map and Directory Service sell advertising space in their books of plat maps. But Rockford Map also sells the books, while Directory Service gives the maps away as part of a directory of residents. Understandably distressed by Directory Service's methods, if not by the fact of competition, Rockford Map filed this suit, contending that Directory Service violated the copyright laws. The district court held a two-day trial and entered judgment for Rockford Map. It ordered Directory Service to turn its working materials and maps over to the court, and it enjoined further publication of infringing maps. The court awarded statutory damages of $250 and attorneys' fees of about $22,000. Its decision also controls numerous other cases between these parties concerning publications in other counties, cases held in abeyance pending the result of this litigation.

Directory Service's principal argument on appeal is that Rockford Map's plat maps are not copyrightable. But 17 U.S.C. §103(a) provides that "compilations" are

copyrightable, subject to the limitation in §103(b) that the copyright in a compilation "extends only to the material contributed by the author of such work, as distinguished from any preexisting material employed in such work." (This is the 1976 Act; the 1909 version is not materially different.) In other words, when the contribution lies in the arrangement of facts, only the arrangement is protected by the copyright. Rockford Map could not copyright the information in the deeds on file in the county courthouse, but it could and did copyright the arrangement of that information on a plat map.

The copyright laws are designed to give people incentives to produce new works. See *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 105 S. Ct. 2218, 2223-24 (1985); *Sony Corp. v. Universal City Studios, Inc.*, 104 S. Ct. 774, 782, 807 (1984). They allow people to collect the reward for their contributions. If the incremental contribution is small, so too is the reward, but a subjective assessment of the importance of the contribution has nothing to do with the existence of copyright.

Directory Service maintains that Rockford Map produced its plat maps with so little effort that the result may not be copyrighted. The court remarked in *Schroeder v. William Morrow & Co.*, 566 F.2d 3, 5 (7th Cir. 1977), that "only 'industrious collection,' not originality in the sense of novelty, is required." The expenditure of 14 hours to update the maps of Ford County, or even 45 to start from scratch, is not very "industrious," Directory Service tells us.

The copyright laws protect the work, not the amount of effort expended. A person who produces a short new work or makes a small improvement in a few hours gets a copyright for that contribution fully as effective as that on a novel written as a life's work. Perhaps the smaller the effort the smaller the contribution; if so, the copyright simply bestows fewer rights. Others can expend the same effort to the same end. Copyright covers, after all, only the incremental contribution and not the underlying information. *Mazer v. Stein*, 347 U.S. 201 (1954).

The input of time is irrelevant. A photograph may be copyrighted, although it is the work of an instant and its significance may be accidental. *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884); *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903); *Time, Inc. v. Bernard Geis Assoc.*, 293 F. Supp. 130 (S.D.N.Y. 1968) (Zapruder film of Kennedy assassination). In 14 hours Mozart could write a piano concerto, J.S. Bach a cantata, or Dickens a week's installment of *Bleak House*. The Laffer Curve, an economic graph prominent in political debates, appeared on the back of a napkin after dinner, the work of a minute. All of these are copyrightable.[2] Dickens did not need to complete *Bleak House* before receiving a copyright; every chapter — indeed every sentence — could be protected standing alone. Rockford Map updates and republishes maps on more than 140 counties every year. If it put out one large book with every map, even Directory Service would concede that the book was based on a great deal of "industry." Rockford Map, like Dickens, loses none of its rights by publishing copyrightable matter in smaller units.

The contribution of a collection of facts lies in their presentation, not in the facts themselves. The collector may change the form of information and so make it more accessible, or he may change the organization and so make the data more understandable. A catalog of names and addresses is copyrightable (*Schroeder*), as is a directory of trade symbols (*Jewelers' Circular Pub. Co. v. Keystone Pub. Co.*, 274 F. 932 (S.D.N.Y. 1921) (L. Hand, J.), *aff'd*, 281 F. 83 (2d Cir.), *cert. denied*, 259 U.S. 581 (1922)) and a compilation of logarithms (*Edwards & Deutsch Lithographing Co. v. Boorman*, 15 F.2d 35 (7th Cir. 1926)). In each

[2] In principle. Mozart's work is in the public domain and anyway was work for hire. The Archbishop of Salzburg probably held the rights. There were no copyright laws in seventeenth-century Germany, and Bach had no way to protect his rights. Dickens was at the mercy of his publishers. Only Laffer's napkin, and not the idea represented by the graph, may be copyrighted. But the principle's the thing.

case the copyright depended on the fact that the compiler made a contribution — a new arrangement or presentation of facts — and not on the amount of time the work consumed.

Here Rockford Map made a contribution. Its employees dug through the records and turned the metes and bounds of the legal descriptions into a pictorial presentation. Teasing pictures from the debris left by conveyancers is a substantial change in the form of the information. The result is copyrightable, no matter how quickly Rockford Map's staff could do the work. See Robert A. Gorman, *Copyright Protection for the Collection and Representation of Facts*, 76 Harv. L. Rev. 1569, 1573-76 (1963).

The remaining arguments carry little force. Directory Service tells us that it did not infringe because its agent, too, was industrious. This is irrelevant. The infringement comes from the fact that Directory Service copied Rockford Map's output, not from the fact that it ended with a different plat map. Directory Service may make all the plat maps it wants; everyone is free to repeat the facts contained in the deeds. But it may not use Rockford Map's work as the template. All Rockford Map's copyright covered was the arrangement and presentation of the information, the translation from dusty books of legal jargon to a picture. It was exactly this contribution that Directory Service borrowed.

All concede, as Learned Hand said in *Jewelers' Circular, supra*, 274 F. at 935, that "a second compiler may check back his independent work upon the original compilation." The right to "check back" does not imply a right to start with the copyrighted work. Everyone must do the same basic work, the same "industrious collection." "A subsequent compiler is bound to set about doing for himself what the first compiler has done." *Kelly v. Morris*, [1866] 1 Eq. 697, 701 (Wood, V.C.). The second compiler must assemble the material as if there had never been a first compilation; only then may the second compiler use

the first as a check on error.[3] Here, as in *Schroeder*, the second compiler started with the selection, ordering, and arrangement of the first. The district court found that Directory Service "did not make an independent production. To the contrary, it merely took the copyrighted RMP information and edited it." That Directory Service made some changes is irrelevant; the starting point itself offended.

The district court awarded attorneys' fees and costs of about $22,000, the amount Rockford Map actually paid its lawyers. Directory Service points out that Rockford Map recovered only $250 in statutory damages. This is hardly a good measure of the stakes of the litigation, however. Rockford Map received an injunction halting the distribution of the infringing works. This decision affects the whole of Rockford Map's business, including disputes between these two parties concerning other counties. Viewed from this perspective, $22,000 is quite a modest fee. See *Taylor v. Meirick*, 712 F.2d 1112, 1122 (7th Cir. 1983). The award of fees in copyright cases rests in the discretion of the district court, *Toksvig v. Bruce Pub. Co.*, 181 F.2d 664 (7th Cir. 1950), a discretion not abused here. Rockford Map also is entitled to fees for work done in this court. It has 15 days to file an appropriate statement with the clerk.

AFFIRMED

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

[3] The copyright on the 1948 maps of Ford County was not renewed, so these plat maps are in the public domain. Directory Service therefore could have started with the 1948 maps. It did not. The subsequent maps are "derivative works," and the arrangement of information in them was copyrightable under §103(b) to the extent it was not in the 1948 maps. Most of the arrangement in the 1983 versions post-dates 1948.

USCA 50234—Pandick Midwest, Inc., Chicago—7-15-85—450

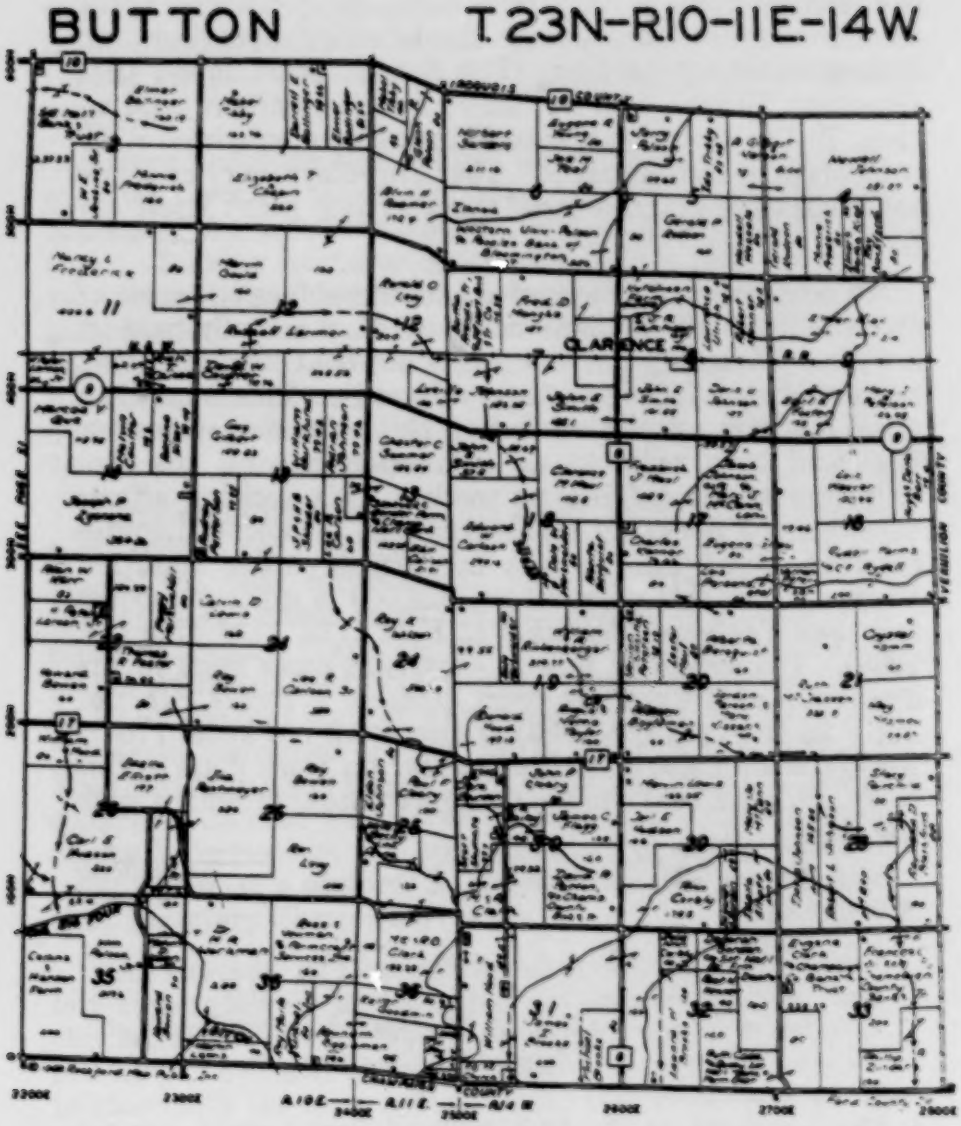

Figure 1

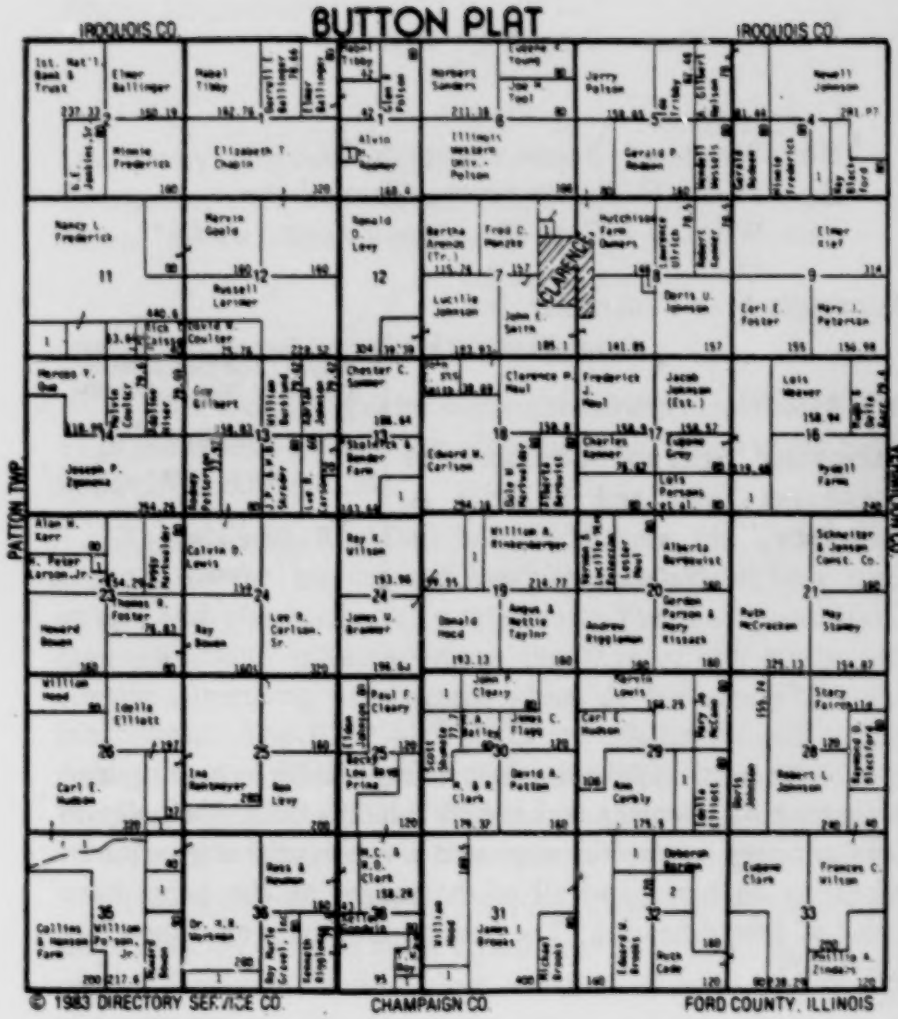
BUTTON PLAT
IROQUOIS CO.
IROQUOIS CO.
PATTON TWP.
VERMILION CO.
© 1983 DIRECTORY SERVICE CO.
CHAMPAIGN CO.
FORD COUNTY, ILLINOIS

Figure 2

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

August 23, 1985

BEFORE
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. FRANK H. EASTERBROOK, *Circuit Judge*
Hon. WILLIAM J. CAMPBELL, *Senior District Judge**

ROCKFORD MAP PUBLISHERS, INC.,
Plaintiff-Appellee,

NO. 84-2301 *vs.*

DIRECTORY SERVICE COMPANY OF COLORADO, INC., and FRANCES A. ANDERSON,
Defendants-Appellants.

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 83-2523

Harold A. Baker, *Judge*

ORDER

Defendants-appellants filed a petition for rehearing and suggestion of rehearing en banc on July 29, 1985. No judge in regular active service has requested a vote on the suggestion of rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

* The Honorable William J. Campbell, Senior District Judge for the Northern District of Illinois, is sitting by designation.

UNITED STATES DISTRICT COURT
Central District of Illinois

ROCKFORD MAP PUBLISHERS, INC., an Illinois Corporation,
Plaintiff,

vs.

DIRECTORY SERVICE COMPANY OF COLORADO, INC., a Colorado Corporation, and FRANCES A. ANDERSON,
Defendants.

No. 83-2523

FINAL ORDER

This is a civil action for copyright infringement under Title 17 of the United States Code. Jurisdiction is vested in the court under 28 U.S.C. § 1338.

The plaintiff, Rockford Map Publishers, Inc. (RMP), is engaged in the business of compiling and publishing land atlases and plat books for rural areas. The plat books show land ownership information on the face of the maps and contain advertising by concerns which do business with rural inhabitants. The RMP plat books are offered for sale to the public. One of RMP's publications, the 1983 Land Atlas and Plat Book for Ford County, Illinois, is the publication for which a copyright infringement is claimed in this case.

The defendant, Directory Service Company of Colorado, Inc. (DSC), publishes rural directories. The DSC directories contain landowner information, a listing of rural inhabitants and advertising. The directories are mailed free of charge to each person listed in the directory.

The RMP publication is a cartographic representation of each congressional township in Ford County. The original base maps in the RMP book were prepared from Department of Agriculture aerial photographs from which tracings were made.

The section lines of the township were drawn onto each township map and certain cartographic features such as streams, railroads and roadways were portrayed. RMP then verified the land ownership in each township from the county tax assessment rolls and drew upon the face of each township map the boundary divisions within each section of land and listed on the face of the map the names of the owners of the particular tracts.

The first such map was published and copyrighted by RMP in 1948. RMP made periodic publication of its 1948 plat book with revisions until 1956 when a new plat book for Ford County, Illinois was prepared by RMP following the same procedures that had been employed in 1948. The 1956 plat book was published periodically with revisions until 1983 when the edition which is in contest in this litigation was published. Each of the editions published by RMP carried statutory copyright notices, and copyright registrations were obtained on the editions which were published in 1948, 1964, 1966, 1969, and 1983.

There is no dispute as to how the challenged publication was assembled by DSC. DSC decided that for 1983 it would add to its directory of rural inhabitants of Ford County, "grid maps" of each township in Ford County giving land ownership information. The DSC township maps were not maps at all but were rectangular grid presentations showing the thirty-six sections in a township without any cartographic features. The boundaries showing land ownership were to be drawn upon the grid and the names of the owners typed onto the face of the grid.

The grids were prepared by DSC in the following manner. DSC sent xerox enlargements of the RMP maps of each Ford County township to its researcher, Frances A. Anderson, together with what DSC described as work sheets. Mrs. Anderson took the RMP map enlargements and the work sheets to the Ford County Courthouse where she examined the tax

assessment rolls and the Sidwell Plat Maps on file in the courthouse to verify the ownership, acreage, and boundary information shown on the RMP maps. Mrs. Anderson marked the xerox copies of the RMP maps with a green check mark if the information shown on the RMP map was consistent with the information on file in the Ford County Courthouse. If an RMP map was inaccurate in any respect, Mrs. Anderson Anderson would make corrections in red on the face of the xerox enlargement changing names, boundaries or acreage to reflect correctly the information on file in the public records in the courthouse. She also made notations on the work sheets to show plots of less than five acres and to record the names of small parcel owners. The edited copies of the RMP maps were then mailed back to DSC's headquarters where the landowner information on the edited RMP maps was transferred by typewriter onto the grid paper that was to appear in the DSC Ford County Directory.

RMP had inserted fictitious middle initials in the names of certain landowners shown in its maps so that the "trap" initials viewed in sequence across the face of a township map would spell out "Rockford Map Inc." This device was employed to catch someone in the act of unauthorized copying. The fictitious middle initials are present in the DSC publication and "Rockford Map Inc." is spelled out across the face of several of the DSC township grids.

On January 16, 1984, the court issued a preliminary injunction enjoining the defendant from distributing its 1983 Ford County Rural Resident and Plat Directory to the public during the pendency of this case. That preliminary injunction, issued during a recess in a criminal jury trial, may have been on the misapprehension that this case involved the copyright of a map. The case in fact centers on the question of the copyright of a compilation of landowner information shown on the face of the RMP maps. In any event, the preliminary injunction, as discussed subsequently in this order, was properly granted.

By oral agreement, at the end of the opening statements made by the parties, it was stipulated that the issues in the case were three-fold: (1) did the plaintiff have a valid copyright in its 1983 plat book; (2) did the defendant infringe that copyright; and, (3) if there was infringement, what were the plaintiff's damages.

The Validity of the Copyright.

It is apparent that the compilation of landowner information in the RMP publication is subject to copyright. "An original compilation of names and addresses is copyrightable even though the individual names and addresses are in the public domain and not copyrightable." *Schroeder v. William Morrow & Co.*, 566 F.2d 3, 5 (7th Cir. 1977). The RMP compilation is not merely an assemblage of names and addresses but is a portrayal of property boundaries showing ownership and the size of the tract owned. It is the product of the compilers industry that is protected and all that need be shown is "industrious collection" on the part of the compiler. *Id.*

The testimony is unrefuted that RMP engaged in industrious collection in this case. The President of Rockford Map, Joy Dummer, testified without contradiction that the 1983 RMP plat book was an updated version of the 1956 plat book which had been prepared "from scratch." As the defendant admits in its trial brief each of the RMP editions carried the requisite statutory copyright notices and copyright registrations were obtained on five of the publications including the 1983 plat book. *See* 17 U.S.C. §§ 407, 408.

The defendant argues that the plaintiff spent only fourteen hours in revising and updating the 1983 edition of its plat book and that therefore industrious collection is not shown. That argument overlooks the fact that the 1983 book was based on the 1956 book which was prepared in the same manner that the 1948 had been prepared beginning with aerial maps of each township in Ford County and involving the industrious collec-

tion of landowners names, acreage and boundary lines from the records in the Ford County Courthouse. The court concludes, therefore, that there was a valid existing copyright in RMP's 1983 Ford County Platbook.

Did the Defendant Infringe the Copyright?

The court concludes that the plaintiff's copyright was infringed. *Toksvig v. Bruce Pub. Co.*, 181 F.2d 664 (7th Cir. 1950) poses the question which must be answered in a case such as this. In *Toksvig*, the publisher of the challenged publication contended that the information obtained from the copyrighted sources was available in the public domain. The same contention that is made by DSC here. "The question", the *Toksvig* court said, "is not whether [the defendant] could have obtained the same information by going to the same sources, but rather did she go to the same sources and do her own independent research? In other words, the test is whether the one charged with the infringement has made an independent production, or made a substantial and unfair use of the complainant's work." *Id.* at 667.

DSC did not make an independent production. To the contrary, it merely took the copyrighted RMP information and edited it and then published it as its own. It was an economic shortcut for DSC to xerox the RMP maps containing the landowner information, update them, and then copy the RMP information onto DSC's grid charts. Had Frances Anderson gone to the Ford County Courthouse, taken each township assessment roll, and each Sidwell Plat on file in the courthouse, and prepared an original grid charge showing land ownership information "from scratch," and then used the RMP publication for comparison purposes, there would have been no infringement. What DSC did was to make a substantial and unfair use of RMP's work.

Further evidence of the infringement and substantial and unfair use of RMP's work is found in the existence of the

common errors in the publication. The errors were planted in the RMP book deliberately by RMP as a method of trapping infringers. The existence of the trap middle initials in the DSC is "strong evidence of actual copying." *Adventures in Good Eating v. Best Places to Eat,* 131 F.2d 809 (7th Cir. 1942); *see also G. R. Leonard & Co. v. Stack,* 386 F.2d 38, at 41 (7th Cir. 1967) (Cummings, J. dissenting).

Damages

The plaintiff has elected to receive an award of statutory damages pursuant to 17 U.S.C. § 504(c). The plaintiff has not presented the court with persuasive evidence of any lost profits from failure to sell its plat book and the defendant has not distributed the infringing publication because DSC was restrained from doing so by preliminary injunction. That injunction will be made final by the judgment in this case, and the plaintiff will also be entitled to have the infringing publications destroyed as well as the manuscripts or master copies from which they were prepared.

The court concludes, having seen the defendant's Frances A. Anderson and the president of DSC, Jerry Leaneagh, testify in the case, that their conduct was not willful but rather that they acted through mistake. Under the circumstances the court concludes that an award of $250 in damages, destruction of the infringing publications and their manuscripts or master copies, together with an award of court costs and attorneys fees, will make the plaintiff whole and serve as an adequate deterrent upon the defendants against future infringements.

IT IS THEREFORE ORDERED that the Clerk enter judgment in favor of the plaintiff and against the defendants in the sum of $250 plus court costs to include an award of reasonable attorneys fees to be determined by the court.

IT IS FURTHER ORDERED that the preliminary injunction issued heretofore be made permanent and the defendants required to deliver to the Clerk of the court within fifteen

(15) days of this final judgment all printed copies of the infringing publication, together with the master copies or manuscripts of that publication, to be surrendered to the plaintiff for destruction.

The defendants are permanently enjoined from releasing or publishing to any person the document entitled Ford County, Illinois Rural Resident and Plat Directory, a copy of which was received in evidence as Exhibit 6.

IT IS FURTHER ORDERED that the motion of the plaintiff to hold the defendants in contempt is denied.

ENTER this 14th day of June, 1984.

HAROLD A. BAKER
United States District Judge